FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 513/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : April 5, 2007.

Heard Shri Bhattad for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff/respondent for possession and permanent injunction. According to the plaintiff, plaintiff was the owner of the suit property and the defendant obstructed the possession of the plaintiff on 10/12/2002. The trial Court framed the necessary issues and held that the plaintiff failed to prove that he was the owner of the suit property. The trial Court further held that the plaintiff could not prove that the defendant had dispossessed the plaintiff from the suit property on 4/1/2004. Consequently, the suit filed by the plaintiff was dismissed.

In an appeal preferred by the plaintiff against the judgment passed by the trial Court, the appellate Court reversed the finding recorded by the trial Court and held that the plaintiff was entitled to

a decree for possession. The appellate Court directed the defendant to hand over the possession of the suit property to the plaintiff. The appellate Court recorded a finding of fact that the plaintiff had failed to prove his title to the suit property, but he had better title to the property than the defendant. The appellate Court recorded a finding that on a consideration of the principle that a person having no title cannot be preferred to a person having better title, the defendant was not justified in dispossessing the plaintiff from the suit property and it was necessary to grant a decree for possession in favour of the plaintiff. While considering the question of possession of the plaintiff over the suit property, the appellate Court considered the tax receipts, the extract of Nondwahi and the Nazul map, to record the aforesaid finding.

The finding recorded by the appellate Court is a pure finding of fact based on an appreciation of the material evidence on record. Since no substantial question of law arises for consideration in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP